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7 MARIO ECUNG,
8 Plaintiff,

9 v.
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11 UNITED AIRLINES INC, et al.,
12 Defendants.
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14 Case No. 15-cv-00456-VC
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16 **ORDER DISMISSING CASE WITH
17 LEAVE TO AMEND**

18 Re: Doc. No. 22
19

20 The court issued an order to show cause why this case should not be dismissed for failure
21 to state a claim. After receiving briefs on this question and holding a hearing, the court concludes
22 that the complaint fails to state a claim for race discrimination. As the plaintiff concedes in his
23 brief, to prevail on a claim that he was denied an unposted position because of his race, he must
24 show that he "indicated to the employer" an interest in being promoted to a particular position, or
25 to a class of positions that includes that particular position. Plaintiff's Response at 3 (quoting
26 *Mauro v. S. New England Telecomm., Inc.*, 208 F.3d 384 (2d Cir. 2000)). *See also* Defendants'
27 Response at 5 ("Where the promotions are not posted, there must be, at minimum, some factual
allegations that reflect an attempt to obtain an identifiable position, such as a clear expression of
interest to the decisionmaker."). As explained in the order to show cause, and in the defendants'
brief, and at the hearing, the complaint does not do this.

28 Accordingly, the complaint is dismissed. Although this is the Fifth Amended Complaint,
29 given the unusual procedural background of this case, the plaintiff will be given one more
30 opportunity to amend the complaint to sufficiently allege that the defendants discriminated against
31 him personally. Any amended complaint must be filed by June 12, 2015. A case management
32 conference will take place June 23, 2015 at 10:00 a.m.

33 **IT IS SO ORDERED.**

United States District Court
Northern District of California

1 Dated: May 22, 2015

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